

using the farm's operating plan, including a projected cash flow budget based on historical performance. Such operating plan is required notwithstanding § 773.18 of this part.

(4) For loans that are for more than \$30,000, repayment ability must be demonstrated using the farm's operating plan, including a projected cash flow budget based on historical performance.

(f) *Creditworthiness.* All loan applicants must have an acceptable credit history demonstrated by debt repayment. A history of failure to repay past debts as they came due (including debts to the Internal Revenue Service) when the ability to repay was within their control will demonstrate unacceptable credit history. Unacceptable credit history will not include isolated instances of late payments which do not represent a pattern and were clearly beyond the applicant's control or lack of credit history.

§ 773.20 Funding applications.

Loan requests will be funded based on the date the Agency approves the application. Loan approval is subject to the availability of funds.

§ 773.21 Loan decision, closing, and fees.

(a) *Loan decision.* (1) The Agency will approve a loan if it determines that:

- (i) The loan can be repaid;
- (ii) The proposed use of loan funds is authorized;
- (iii) The applicant has been determined eligible;
- (iv) All security requirements have been, or will be met at closing;
- (v) All other pertinent requirements have been, or will be met at closing.

(2) The Agency will place conditions upon loan approval as necessary to protect its interest.

(b) *Loan closing.* (1) The applicant must meet all conditions specified by the loan approval official in the notification of loan approval prior to loan closing;

(2) There must have been no significant changes in the plan of operation or the applicant's financial condition since the loan was approved; and

(2) The applicant will execute all loan instruments and legal documents

required by the Agency to evidence the debt, perfect the required security interest in property securing the loan, and protect the Government's interests, in accordance with applicable State and Federal laws. In the case of an entity applicant, all officers or partners and any board members also will be required to execute the promissory notes as individuals.

(c) *Fees.* The applicant will pay all loan closing fees including credit report fees, fees for appraisals, fees for recording any legal instruments determined to be necessary, and all notary, lien search, and similar fees incident to loan transactions. No fees will be assessed for work performed by Agency employees.

§ 773.22 Loan servicing.

Loans will be serviced as a Non-program loan in accordance with 7 CFR part 766 during the term of the loan. If the loan is not paid in full during this term, servicing will proceed in accordance with 7 CFR part 766, subpart H.

[72 FR 64121, Nov. 15, 2007]

§ 773.23 Exception.

The Agency may grant an exception to the security requirements of this section, if the proposed change is in the best financial interest of the Government and not inconsistent with the authorizing statute or other applicable law.

PART 774—Emergency Loan for Seed Producers Program

Sec.

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§ 774.1 Introduction.

The regulations of this part contain the terms and conditions under which loans are made under the Emergency Loan for Seed Producers Program. These regulations are applicable to applicants, borrowers, and other parties involved in making, servicing, and liquidating these loans. The program objective is to assist certain seed producers adversely affected by the bankruptcy filing of AgriBiotech.

§ 774.2 Definitions.

As used in this part, the following definitions apply:

Agency is the Farm Service Agency, its employees, and any successor agency.

Applicant is the individual or business entity applying for the loan.

Business entity is a corporation, partnership, joint operation, trust, limited liability company, or cooperative.

Domestically owned enterprise is an entity organized in the United States under the law of the state or states in which the entity operates and a majority of the entity is owned by members meeting the citizenship test.

False information is information provided by an applicant, borrower or other source to the Agency that the borrower knows to be incorrect, and that the borrower or other source provided in order to obtain benefits for which the borrower would not otherwise have been eligible.

Seed producer is a farmer that produced a 1999 crop of grass, forage, vegetable, or sorghum seed for sale to AgriBiotech under contract.

§ 774.3 Appeals.

A loan applicant or borrower may request an appeal or review of an adverse decision made by the Agency in accordance with 7 CFR part 11.

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§§ 774.4-774.5 [Reserved]

§ 774.6 Eligibility requirements.

Loan applicants must meet all of the following requirements to be eligible under the Emergency Loan for Seed Producers Program;

(a) The loan applicant must be a seed producer;

(b) The individual or entity loan applicant must have a timely filed proof of claim in the Chapter XI bankruptcy proceedings involving AgriBiotech and the claim must have arisen from a contract to grow seeds in the United States;

(c) The loan applicant must be a citizen of the United States or an alien lawfully admitted to the United States for permanent residence under the Immigration and Nationalization Act. For a business entity applicant, the majority of the business entity must be owned by members meeting the citizenship test or, other entities that are domestically owned. Aliens must provide the appropriate Immigration and Naturalization Service forms to document their permanent residency;

(d) The loan applicant and anyone who will execute the promissory note must possess the legal capacity to enter into contracts, including debt instruments;

(e) At loan closing, the applicant and anyone who will execute the promissory note must not be delinquent on any Federal debt, other than a debt under the Internal Revenue Code of 1986;

(f) At loan closing, the applicant and anyone who will execute the promissory note must not have any outstanding unpaid judgments obtained by the United States in any court. Such judgments do not include those filed as a result of action in the United States Tax Courts;

(g) The loan applicant, in past and current dealings with the Agency, must not have provided the Agency with false information.

§ 774.7 [Reserved]

§ 774.8 Limitations.

(a) The maximum loan amount any individual or business entity may receive will be 65% of the value of the